

Mr. Chairman: The question is:

"That the Bill further to amend the Benares Hindu University Act, 1915, be taken into consideration."

The motion was negatived.

INDIAN MAJORITY (AMENDMENT) BILL

(Amendment of section 3)

Shri Jhulan Sinha (Saran North): I beg to move:

"That the Bill further to amend the Indian Majority Act, 1875 be taken into consideration."

In rising to move for the consideration of this Bill, I would like to clarify the position of the law as it is and also as it should be according to my amendment. Section 3 of the Indian Majority Act reads as follows:

"Subject as aforesaid, every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act No. X of 1865 or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before."

Subject as aforesaid, every other person domiciled in Part A States and Part C States shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before."

The law as it provides that everybody in Part A and Part C States will be deemed to be a major on the attainment of eighteen years, except those for whose property or person a Court of Justice or Court of Wards has been appointed as guardian. In the case of the latter, he will be deemed to be a major on the attainment of twenty-one years of age and not before. The difficulty or anomaly is this. I personally know of a case of an estate which was governed by a Court of Wards in Bihar. When the father died, his two children were less than eighteen years of age. The Court of Wards continued to manage the estate till the elder one attained the age of twenty-one years. (I have not read my amendment, I am sorry.) As it is, everybody will be deemed to be a major on his attaining the age of eighteen years. What I want is this when a case is one where the persons' personal properties are governed by a Court of Wards or Court of Justice and it also happens to be a case of a mitakshara family living jointly, the eldest person attaining the age of 21 years will automatically under the present law be deemed to be a major and will be put in possession of the properties at his wish, but when the property is released from the superintendence of the Court of Wards, the younger one, who is already 18 but still below 21 years of age, will now be put under the guardianship and tutelage of the elder one who has already attained the age of majority. This position seems to me to be very anomalous. If the general law of the land provides that in the case of people, whose property and person are governed by the Court of Wards or Court of Justice, the age of 21 years will be necessary to make them major and when the property is released, the younger members of the joint family, whose property has already been released in this way by the Court of Wards, still continue to be minor even after the attainment of the age of 18 years, that is, till they attain the age of 21 years, that is the difficulty. In the case I have just cited, the estate was released on the elder one attaining the

age of 21 years. Now, the elder one is the guardian of the younger one, who is 19 years of age, and is not under the tutelage of the Court of Wards or Court of Justice but under the tutelage of his elder brother who is managing the property of the family in his own way—in some cases to the detriment of the interests of this so-called minor one. The younger one, who has already attained the age of 19 years, ought to be deemed under the general law of the land to be a major and should be free to manage his share of the property according to his own wish and according to his own genius. But the difficulty is that the present law continues to treat him as minor even after his attaining the age of 18 years and puts him under the tutelage of his elder one, who does the *karthaship* or management of the family property in his own interests, and the disabilities attaching to a minor continue to attach to the younger one who has already attained the age of 19 years. My amendment to section 3 of Indian Majority Act is this. In the case of a *mitakshara* family consisting of more than one minor living jointly, if the estate is released from the superintendence of the Court of Wards on the elder one attaining the age of 21 years, the younger one or ones should be deemed to be major on their attaining the age of 18 years only and not 21.

Mr. Chairman: Has there been any judicial pronouncement in a case of this type? Have such cases gone up to high courts or the Supreme Court? Have the courts judicially pronounced upon the subject?

Shri Jhulan Sinha: I do not know of any case having gone up to the court. I know this case particularly obtaining in my area. If the case goes to the court, naturally sec. 3 as it is will apply.

Mr. Chairman: According to the ordinary law of the land, in respect of joint family property, if there is a major in the family, then no guardian

can be appointed in respect of the property of the minor members of the family. This is the general law of the land.

Shri Jhulan Sinha: According to the general law of the land, any member of a joint family attaining the age of 18 years is deemed to be a major, but in the case of those where the court of Wards or Court of Justice has been appointed as guardian of their property, and when the property is already released to the elder one on his attaining the age of 21 years, the younger ones even after they have attained the age of 18 years, are being treated as minors.

The Minister in the Ministry of Law (Shri Pataskar): Was that property taken over under the Bihar Court of Wards Act?

Shri Jhulan Sinha: Certainly. The minority of the younger one is still being permitted under the Indian Majority Act and I am drawing your attention to that anomaly.

Mr. Chairman: So far as the Court of Wards is concerned, the property is released from the superintendence of the Court of Wards, but it is a matter between the two brothers. Has the matter gone to the court? Has the court given any interpretation of the law?

Shri Jhulan Sinha: No, but the disabilities attaching to a minor continue to be attached to him even now although he has attained the age of 19 years. That is the anomaly which is being pointed out.

Mr. Chairman: Unless the matter goes to the court and is decided and interpreted by the court how can you say that a person may be treated as a major.

Shri Mulchand Dube (Farrukhabad Dist.—North): The age is 21 for the superintendence of the Court of Wards.

Mr. Chairman: According to the allegations of my friend, the major who had attained the age of 21 came in possession of all the property. Now it is a question between two brothers

[Mr. Chairman]

—one brother saying that he is a major at the age of 18 and the other brother taking the view that he is not a major because he is not a major according to the law. The matter has not gone to the court. We do not know what interpretation of the court will put. How can you assume that the interpretation will be the one which my hon. friend advocates.

Shri Jhulan Sinha: I have just said that the matter has not gone to the courts. If the matter goes to the court, section 3 of the Indian Majority Act as it is will apply.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Indian Majority Act, 1875, be taken into consideration."

Shri S. C. Samanta (Tanluk): My hon. friend, Shri Jhulan Sinha, has brought this Bill for the protection of the minors. According to the mitakshara law when a son is born he inherits the property but he refers to the case of Court of Wards. In case of sons who are minors, the property is managed by them and whenever the eldest son attains majority the estate may be handed over to him. Supposing there are three brothers—minor brothers—they could not manage the property but how can their right to the property go away simply because their eldest brother is managing the estate? By the amendment brought forward by my friend, he has provided that since the other brothers had attained the age of majority, they will be entitled to the property. Already they are entitled to the property. It is only the question of management. Generally, the eldest brother in an estate takes charge of the whole property and the others follow him. As you had pointed out if any brother who had become a major goes to a court for the necessary power of control over the estate, then the question will be settled. But my hon. friend said that no such case had ever gone to the court. So his contention to amend the clause is not a tenable one.

I am not conversant with the mitakshara law. You, Sir, are very much conversant and I will be glad if you and other hon. Members who are conversant with the mitakshara law let us know what the real position is.

Shri Pataaskar: I have been trying to understand the difficulty which the hon. Mover of this Bill had in mind and the purpose for which he had introduced the Bill. Clause 3 of the Indian Majority Act, reads:

"Subject as aforesaid, every minor of whose person or property or both a guardian, other than a guardian.....has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before."

He wants that the age should be eighteen years. So far as I know different States have got different Court of Wards Acts and I do not know of the Bihar Court of Wards Act. I know of the Bombay Court of Wards Act. Whenever the Court of Wards assumes superintendence of the property even in the case of a mitakshara joint family where all are minors, this applies. So far as the question of joint mitakshara family is concerned where one of them is a major it is carried on by him. I do not think that any guardian could be appointed because there are other provisions also and I do not want to refer to them. Generally the principle is that in respect of the people having a personal law, they are governed by that law and the courts do not appoint any guardians to those properties. Personal laws are accepted. But when

such guardians are appointed in cases where all are minors, the complaint is otherwise. The complaint had been that they did not release the property unless all had become majors according to the Indian Majority Act which says that whenever a Court of Wards has assumed superintendence of the property or a guardian is appointed by a District Court, he should attain the age of 21 and therefore, they do not generally release the property from the guardian till all of them had become majors. This is the practice that has been followed so far as I know.

The hon. Mover of this Bill wants to add to this Indian Majority Act a clause like this that in the case of a *mitakshara* Hindu family consisting of more than one minor the provisions of this section shall apply to the age of the eldest one amongst them and the others shall be deemed to have attained majority only on completion of eighteen years. In cases where all are minors and the Court had appointed somebody as guardian, what will happen if this is accepted? The eldest attains the age of 21 years. But he will claim that he has become a major even earlier. So many complications may arise. The principle that is now followed is wholesome; so far as *mitakshara* families are concerned, there are no guardianships there; they are governed by the personal laws

Not only that. In the Hindu Minority and Guardianship Bill which is applicable to the Hindus and which had been passed by the Rajya Sabha we have made a provision in clause 12. That is likely to come up before this House sometime in the latter part of this session. It reads:

"Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest".

We are specifically going to make that provision whether it is *mitakshara* or *dayabagha*. It reads further:

201 LSD.—5.

"and provided that nothing in this section....."

Mr. Chairman: As a matter of fact, the trouble is that, so far as section 3 is concerned, it does not speak of two or three minors for whom one guardian is appointed. Supposing there are only two minors and a Court of Wards is appointed in respect of both. Then according to the present law both will attain majority at the age of 21. This is the contention of Shri Jhulan Sinna and his point of amendment is that in a case of this nature the one man who gets his majority at the age of 21, his case is all right. So far as the other man is concerned, why should he not attain the age of majority before he attains the age of 21?

Shri Pataskar: Therefore the point to my mind is that it will apply only, as I said, in cases where there is a joint family in which one person is a major. Then no other guardian is to be appointed by the court. This law even now exists. Probably, there is some Bombay High Court ruling or some other thing contrary to this, but I will not enter into that discussion. That is the normal ruling. Supposing in a case there are two minors and a guardian is appointed, it is with respect to both.

Mr. Chairman: The guardian is appointed in respect of the property of the entire family.

Shri Pataskar: The guardian is in respect of A and B if they are two minor brothers or nephews or whoever they are. Supposing one attains the age of 21 and the other is, say, only 19, what will happen is that, B who is only 19 years of age is not a major according to definition given under the Indian Majority Act. That is true. But, is it or is not desirable that the Court of Wards or guardian appointed by a court, having once taken possession of the property of a joint family where all were minors, simply because one has attained the age of 21 years, should release the property? Thereby, I am afraid the interests of the other man are likely to be jeopardised. On the contrary, I

[Shri Pataskar]

know that the practice so far as Bombay is concerned is that in such cases they do not release the property under the Court of Wards Act till both of them become majors.

There is a solution to the point raised by you, Sir. There are two sorts of things. On the one hand it may be argued that in spite of the fact that A has become a major the whole property is under the management of the Court of Wards. In that case the procedure followed, so far as I know, where the Court of Wards Act is working, is that they give a share of the income to that man. If in spite of that he wants his share to be separated then he is allowed to do so. That procedure which is followed is more in the interests of the family as a whole consisting of all these minors. If this is not followed, then what will happen is that this man A who has just come of age and completed 21 years will immediately take possession of the property which belongs not only to him, but to others also. Naturally B has got half the share and it is a matter to be considered whether ultimately it would be in the interests of the minors concerned that if man who has just come of age should be allowed to take charge of the property and that the property should be restored to him so that he may deal with it in any way he likes. In that case he will look after the interests of B who has not become a major under the present Act.

Considering all matters and looking to the working of this Act which was passed in 1875 I think it has worked well. There may be an occasional case to which my hon. friend referred, but generally speaking, it has been found that in the interests of joint families the present policy may continue. I have at least heard no complaint. Not only that; if we consider the whole matter it is much better than in respect of properties—because it is only large properties that are taken by Court of Wards—the Court of Wards should continue. We should consider

whether the interests of the minor coparcener should be given in charge of the major coparcener when he has attained the age of 21 or whether it is desirable that it should be allowed to be kept with the Court of Wards till both of them, whose property was taken over by the Court of Wards, have attained the age of majority.

Mr. Chairman: In the example which the hon. Minister took there is only a difference of 2 years. Supposing there is a minor who is much less in age—say, 5 or 10 years—then should the Court of Wards continue for another 10 years before he comes to the age of 21?

Shri Pataskar: There is a balance of convenience to be considered. It should be considered whether this man in such a hard case should be allowed to be in charge of the property or whether the Court of Wards should be allowed to continue to be in possession of the minor's interests and this man should be deprived of the right to manage things for himself. If he thinks that the management of the Court of Wards is not good then it is open to him to get his interests separated. I think to my knowledge there have been cases in Bombay where, if there is a great difference in age, the elder brother has got his interests separated. I think, considering the balance of convenience—there may be occasional hard cases—the law as it has been enacted in 1875 for this purpose on the whole has worked very satisfactorily without causing much dislocation even to the joint families. Actually very few cases arise. Normally, in the case of joint families where there is a major nobody can take possession of that property. No guardian is appointed. It is only in cases where all are minors, it is only in such unfortunate circumstances that a court or somebody appoints a guardian to look after the property.

I think looking to the conveniences—though there may be some stray few hard cases—the present provision as it stands has operated well and has caused no hardship. Therefore, though,

of course, I sympathise with the stray hard cases which might have arisen. I think there is no necessity for amending the Indian Majority Act which has been found to be working well for the last 75 years. Therefore, I regret I cannot agree to the amendment. I do not know whether there might have been any other remedy. It may be a matter for argument also as to whether the Court of Wards should restore the property. Supposing the Court of Wards restored the possession of the property to the elder brother as was pointed out in the case to which my hon. friend referred, it can be a matter for argument whether after that release the other man should attain the majority only at the age of 21. The wording of the clause is not free from doubt. Supposing a guardian has been appointed, as soon as a guardian is appointed he takes all the powers. When he restores the property to the elder brother he takes away all the powers of guardianship. Then what is the result? Are we still to argue from the provisions of this Act that the other minor will continue to be only a minor. I think these are all points to be considered. As you rightly pointed out the proper course should have been either to take the matter to a court of law and get it decided or much better it would have been to get the Court of Wards Act of Bihar amended and get the Act amended so far as Bombay is concerned. There are Acts in different States and probably it would be much better, if there are any narasnip, to get the Acts in the States amended rather than try to interfere with an Act of the Central Legislature which has, I think, been working well since the year 1878. I hope my hon. friend will see his way—and I would like to persuade him—to take up the matter in the States. Instead of amending the Central Act like this it would be much better to have his grievances—whatever they may be—rectified by a proper amendment either of the Court of Wards Act in Bihar or by some other suitable

method. I hope, he will, therefore, not press his amendment.

Shri Jhulan Sinha: Sir, I find that the hon. Minister has not been able to appreciate fully the difficulties caused by section 3 of the Indian Majority Act. He has dubbed it as a stray case. It is a case which has come to my notice and there may be many others. So, I thought it fit to bring it to the notice of this House. I have also narrated before the House the difficulties arising out of section 3 of the Act. The wonder is that the hon. Minister in the Ministry of Law has one idea about the working of the Court of Wards Act in his State and we have another idea about it in our State. So far as I am aware the difficulty does not seem to rest with the Court of Wards Act; the difficulty rests with the Indian Majority Act and I have drawn the attention of the House and the Government to this point. I have brought the anomaly and inconvenience under this section to the notice of the House and the Government. In the circumstances I leave it to them to decide on the issue when they think it proper and convenient.

In the circumstances I beg leave of the House to withdraw the Bill.

The Bill was, by leave, withdrawn.

TITLES AND GIFTS FROM FOREIGN STATES (PENALTY FOR ACCEPTANCE) BILL

Shri C. E. Narasimhan (Krishnagiri): I beg to move:

"That the Bill to provide for penalties for acceptance of titles and gifts from Foreign States, be taken into consideration."

May I continue, Sir?

5 P.M.

Mr. Chairman: It is already five O'clock. He is yet to make his speech. He may, therefore, speak on the next occasion.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, the 8th August, 1955.